

AMENDED IN ASSEMBLY AUGUST 22, 2006

AMENDED IN ASSEMBLY AUGUST 8, 2006

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN SENATE APRIL 19, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1818

**Introduced by Senator Alarcon
(Coauthor: Senator Florez)**

February 24, 2006

An act to amend Section 6068 of the Business and Professions Code, and to add and repeal Section 801-~~to~~ of the Government Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Alarcon. Attorney's fees.

Existing law provides that in any civil action to appeal or review the award, finding, or other determination of any administrative proceeding, except as specified, where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant, if he or she prevails in the civil action, may collect reasonable attorney's fees, as specified.

This bill would, until January 1, 2010, require the court to award attorney's fees and other litigation expenses to a local governmental entity, as specified, in any civil action brought by a big box retailer, as defined, to challenge the validity or application of an ordinance, rule,

regulation, or initiative measure regulating zoning that is adopted by the local governmental entity if the local governmental entity is the prevailing party and the court finds *both* that the big box retailer commenced or maintained the action to intimidate the local governmental entity and that the big box retailer has a history of intimidating lawsuits or repeated sanctions or fines in the previous 5 years, as specified. The bill would provide that these provisions shall apply to any litigation pending on or after April 19, 2006. The bill would require the State Bar of California to ~~study and~~ report to the Legislature by January 1, 2009, ~~regarding the frequency of intimidating lawsuits and the improper litigation practices of big box retailers, as specified on the number of attorneys sanctioned, and the number of complaints received against attorneys for the conduct proscribed above.~~

Existing law requires an attorney to report to the agency charged with attorney discipline, in writing, within 30 days of specified acts or misconduct by the attorney.

The bill would additionally require an attorney to report any award of attorney's fees to an opposing party based on the conduct of the attorney or his or her client pursuant to the provisions described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6068 of the Business and Professions
- 2 Code is amended to read:
- 3 6068. It is the duty of an attorney to do all of the following:
- 4 (a) To support the Constitution and laws of the United States
- 5 and of this state.
- 6 (b) To maintain the respect due to the courts of justice and
- 7 judicial officers.
- 8 (c) To counsel or maintain those actions, proceedings, or
- 9 defenses only as appear to him or her legal or just, except the
- 10 defense of a person charged with a public offense.
- 11 (d) To employ, for the purpose of maintaining the causes
- 12 confided to him or her those means only as are consistent with
- 13 truth, and never to seek to mislead the judge or any judicial
- 14 officer by an artifice or false statement of fact or law.

1 (e) (1) To maintain inviolate the confidence, and at every peril
2 to himself or herself to preserve the secrets, of his or her client.

3 (2) Notwithstanding paragraph (1), an attorney may, but is not
4 required to, reveal confidential information relating to the
5 representation of a client to the extent that the attorney
6 reasonably believes the disclosure is necessary to prevent a
7 criminal act that the attorney reasonably believes is likely to
8 result in death of, or substantial bodily harm to, an individual.

9 (f) To advance no fact prejudicial to the honor or reputation of
10 a party or witness, unless required by the justice of the cause with
11 which he or she is charged.

12 (g) Not to encourage either the commencement or the
13 continuance of an action or proceeding from any corrupt motive
14 of passion or interest.

15 (h) Never to reject, for any consideration personal to himself
16 or herself, the cause of the defenseless or the oppressed.

17 (i) To cooperate and participate in any disciplinary
18 investigation or other regulatory or disciplinary proceeding
19 pending against himself or herself. However, this subdivision
20 shall not be construed to deprive an attorney of any privilege
21 guaranteed by the Fifth Amendment to the Constitution of the
22 United States, or any other constitutional or statutory privileges.
23 This subdivision shall not be construed to require an attorney to
24 cooperate with a request that requires him or her to waive any
25 constitutional or statutory privilege or to comply with a request
26 for information or other matters within an unreasonable period of
27 time in light of the time constraints of the attorney's practice.
28 Any exercise by an attorney of any constitutional or statutory
29 privilege shall not be used against the attorney in a regulatory or
30 disciplinary proceeding against him or her.

31 (j) To comply with the requirements of Section 6002.1.

32 (k) To comply with all conditions attached to any disciplinary
33 probation, including a probation imposed with the concurrence of
34 the attorney.

35 (l) To keep all agreements made in lieu of disciplinary
36 prosecution with the agency charged with attorney discipline.

37 (m) To respond promptly to reasonable status inquiries of
38 clients and to keep clients reasonably informed of significant
39 developments in matters with regard to which the attorney has
40 agreed to provide legal services.

1 (n) To provide copies to the client of certain documents under
2 time limits and as prescribed in a rule of professional conduct
3 which the board shall adopt.

4 (o) To report to the agency charged with attorney discipline, in
5 writing, within 30 days of the time the attorney has knowledge of
6 any of the following:

7 (1) The filing of three or more lawsuits in a 12-month period
8 against the attorney for malpractice or other wrongful conduct
9 committed in a professional capacity.

10 (2) The entry of judgment against the attorney in a civil action
11 for fraud, misrepresentation, breach of fiduciary duty, or gross
12 negligence committed in a professional capacity.

13 (3) The imposition of judicial sanctions against the attorney,
14 except for sanctions for failure to make discovery or monetary
15 sanctions of less than one thousand dollars (\$1,000).

16 (4) The bringing of an indictment or information charging a
17 felony against the attorney.

18 (5) The conviction of the attorney, including any verdict of
19 guilty, or plea of guilty or no contest, of a felony, or a
20 misdemeanor committed in the course of the practice of law, or
21 in a manner in which a client of the attorney was the victim, or a
22 necessary element of which, as determined by the statutory or
23 common law definition of the misdemeanor, involves improper
24 conduct of an attorney, including dishonesty or other moral
25 turpitude, or an attempt or a conspiracy or solicitation of another
26 to commit a felony or a misdemeanor of that type.

27 (6) The imposition of discipline against the attorney by a
28 professional or occupational disciplinary agency or licensing
29 board, whether in California or elsewhere.

30 (7) Reversal of judgment in a proceeding based in whole or in
31 part upon misconduct, grossly incompetent representation, or
32 willful misrepresentation by an attorney.

33 (8) *Any award of attorney's fees to an opposing party based*
34 *on the conduct of the attorney or his or her client pursuant to*
35 *Section 801 of the Government Code.*

36 (9) As used in this subdivision, "against the attorney" includes
37 claims and proceedings against any firm of attorneys for the
38 practice of law in which the attorney was a partner at the time of
39 the conduct complained of and any law corporation in which the
40 attorney was a shareholder at the time of the conduct complained

1 of unless the matter has to the attorney's knowledge already been
2 reported by the law firm or corporation.

3 ~~(9)~~

4 (10) The State Bar may develop a prescribed form for the
5 making of reports required by this section, usage of which it may
6 require by rule or regulation.

7 ~~(10)~~

8 (11) This subdivision is only intended to provide that the
9 failure to report as required herein may serve as a basis of
10 discipline.

11 ~~SECTION 1.~~

12 SEC. 2. Section 801 is added to the Government Code, to
13 read:

14 801. (a) In any civil action brought by a big box retailer to
15 challenge the validity or application of an ordinance, rule,
16 regulation, or initiative measure regulating zoning that is adopted
17 by any local governmental entity whose current financial
18 resources to defend against the action, excluding its authority to
19 increase taxes, are less than one-third of the financial resources
20 available to the big box retailer to commence and maintain the
21 action, the court shall award attorney's fees and other litigation
22 expenses to the local governmental entity if all of the following
23 apply:

24 (1) The local governmental entity is the prevailing party.

25 (2) The court finds that the big box retailer commenced or
26 maintained the action to intimidate the local governmental entity
27 to abandon its zoning decision because of the retailer's
28 substantially greater financial resources to conduct the litigation.

29 (3) The court finds that the big box retailer has a history of
30 intimidating lawsuits as described in paragraph (2) in the
31 previous five years or in that period has repeatedly been
32 sanctioned or fined for improper conduct in litigation or for a
33 violation of a court order.

34 (b) For purposes of this section, "big box retailer" has the
35 same meaning as defined in Section 53084; *however, "big box*
36 *retailer" does not include a person whose primary business*
37 *activity is as a licensed vehicle dealer, as defined in Section 285*
38 *of the Vehicle Code.*

39 (c) This section shall apply to any litigation pending on or
40 after April 19, 2006.

1 (d) The State Bar of California shall ~~study and~~ report to the
2 Legislature on or before January 1, 2009, ~~regarding the frequency~~
3 ~~of intimidating lawsuits and the improper litigation practices of~~
4 ~~big box retailers operating in the state, including, but not limited~~
5 ~~to, any sanctions or fines awarded by any court against a big box~~
6 ~~retailer for improper conduct in litigation or for a violation of a~~
7 ~~court order.~~ *on the number of attorneys sanctioned, and the*
8 *number of complaints received against attorneys, for conduct*
9 *described in paragraph (3) of subdivision (a) after the date this*
10 *section takes effect.*

11 (e) This section shall remain in effect only until January 1,
12 2010, and as of that date is repealed, unless a later enacted
13 statute, that is enacted before January 1, 2010, deletes or extends
14 that date.